

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 42012 (SD).

Affirmed.

1. Oil and Gas Leases: Reinstatement

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where the lessee has notice of the address of the proper office for making payment, the use of an incorrect address is not justified. A lessee has not been reasonably diligent where it twice sends payment using the incorrect address even though mailed before the due date, when the correctly addressed payment is not mailed until after the due date.

APPEARANCES: Teri Baumgartner, Lease Records Supervisor, Energetics, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Energetics, Inc., has appealed the decision of the Montana State Office, Bureau of Land Management (BLM), dated December 20, 1982, denying its petition for reinstatement of oil and gas lease M 42012 (SD) that had terminated automatically by operation of law on December 1, 1982, for failure to pay the annual rental timely. BLM had received appellant's rental payment on December 9, 1982.

In its statement of reasons, appellant explains that it sent the rental on November 9, 1982, addressed to BLM as follows: "316 North 26th Street, Billings, MT 59501." The check was returned to it with the zip code scratched

off and marked "Undeliverable as Addressed." Appellant changed the zip code to "59107" and sent the payment again on November 24, 1982. The payment was returned again marked "Undeliverable as Addressed." Although the due date had now passed, appellant immediately sent the payment again but this time addressed it to BLM at "P.O. Box 30157, Billings, MT 59107." Appellant contends that its reasonable diligence was demonstrated by its attempts to tender payment and that the delay was not by any means caused by negligence.

[1] Under 30 U.S.C. § 188(c) (1976), where the rental is received within 20 days after the due date, a terminated oil and gas lease may be reinstated upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. In absence of such proof, a petition for reinstatement is properly denied. See, e.g., Arnold L. Gilberg, 57 IBLA 46 (1981); Alice M. Conte, 46 IBLA 312 (1980); J. R. Oil Corp., 36 IBLA 81 (1978). Untimely payment of the rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Harold W. Fullerton, 46 IBLA 116 (1980); Hubert W. Scudder, 35 IBLA 58 (1978). Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2).

Departmental regulation 43 CFR 3103.1-2 requires that payments be made to the proper office. We recently reviewed circumstances almost identical to those presented here in Martin Exploration Management Corp., 63 IBLA 287 (1982), and found the use of an obsolete address for the Montana State Office to be unjustified. The proper address for that office is set forth in 43 CFR 1821.2-1 as "Granite Tower, 222 N. 32nd Street, P.O. Box 30157, Billings, Montana 59107." The receipt for payment of the 1981 rental and the 1982 courtesy notice of rental due sent to appellant both showed BLM's address as "P.O. Box 30157, Billings, MT 59107." The address used by appellant has been obsolete for several years. It was last listed as the State Office address in the October 1978 revision of 43 CFR. Appellant did not even take assignment of this lease until May of 1980. Ascertainment of BLM's correct address was not a factor outside appellant's control and appellant must be held to have actual and constructive notice of the correct address. Martin Exploration Management Corp., *supra*.

Transmittal on November 9, 1982, of rental due on December 1, 1982, to the proper office would ordinarily be considered reasonably diligent, but in view of appellant's unjustified use of an obsolete address, its failure to correct its error when first given the chance, and the subsequent proper transmittal only after the due date, we cannot find that appellant was reasonably diligent.

BLM's decision rejecting appellant's petition for reinstatement of oil and gas lease M 42012 (SD) filed pursuant to 30 U.S.C. § 188(c) (1976) must be affirmed. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed January 12, 1983, amends section 31 of the Mineral Leasing Act

of 1920, 30 U.S.C. § 188 (1976) to afford an additional opportunity to reinstate a lease terminated by operation of law. 1/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

1/ Section 401 added the following new subsection (d)(2) to 30 U.S.C. § 188 (1976):

"(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

"(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

"(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

"(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

"(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

"(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

"(ii) fifteen months after termination of the lease."

Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of the Act where denial of reinstatement under 30 U.S.C. § 188(c) (1976) is upheld by the Board on behalf of the Secretary after enactment, appellant should inquire promptly at the Montana State Office of BLM if it wishes to avail itself of this provision, since the 120-day period from enactment lapses May 12, 1983.

